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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/972,124	10/05/2001	Russell D. Birkholz	56764US002	3669

32692 7590 03/20/2003

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EXAMINER

ZIRKER, DANIEL R

ART UNIT	PAPER NUMBER
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1771

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DATE MAILED: 03/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE -3- MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 2/18/03

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-21 is/are pending in the application.
- Of the above claim(s) 19, 20 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-18, 21 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 7
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Applicant's election of claims 1-18 and 21 in Paper No. 6 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

3. Claims 1-8, 10-18 and 21 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. More particularly, despite the recent claim amendments several problems still remain. In each of the independent claims the "adhesive layer" which ends the claim still has no meaningful structural relationship with the remainder of the claim. With respect to claims 7 and 8, the newly added phrase "exposed to the air" is unclear just as how the structural relations that can exist have been changed from what previously existed.

4. Claims 1-18 and 21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over JP -244, either taken individually, or for claims 7 and 8 in further view of EP -264, substantially for the reasons set forth in paragraph No. 13, together with the following additional observations. Applicants' claim amendments to the independent claims wherein the "third

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layer" is now "in contact" with the second major surface of the second layer (instead of "associated" with the layer surface) has eliminated the anticipation rejection of record based upon JP -244. However, the reference is again relied upon as previously set forth, with the Examiner repeating his rationale that such parameters as the specific location of the "ink" layer and the "fluid transport substrate" believed to be well within the ordinary skill of the art, as is the presence of a laminating adhesive adhering the first layer to the remainder of the article (claim 14) and the presence of a release coating (claim 15). Applicants have nowhere responded to this particular obviousness grounds of rejection, so it is hereby repeated.

5. Claims 1-18 and 21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over either JP -953, either taken individually or for claims 7 and 8 in further view of EP -264, substantially for the reasons set forth in paragraph Nos. 15 and 14 of Paper No. 6, together with the following additional observations. The Examiner's rationale is again substantially similar to his obviousness rejection based upon JP -244, with such parameters as the specific location of the "ink" layer and the "fluid transport substrate" again believed to be parameters whose location is simply a routine design choice that is well within the ordinary skill of the art. Applicants again have

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failed to address this particular obviousness rationale, so it is hereby repeated.

6. Applicants' amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicants are reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Zirker whose telephone number is (703) 308-0031. The examiner

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can normally be reached on Monday-Thursday from 8:30 A.M. to 6:00 P.M. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for this Group is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Dzirker:cdc

March 17, 2003

DANIEL ZIRKER
PRIMARY EXAMINER
GROUP 1900-
1700

Daniel Zinker